

From: [Fowler, Sarah](#)
To: [Sheata, Carrie A](#)
Cc: [Muller, Sheldon](#); [Silver, Wendy](#); "[Hranac - CDPHE, John](#)"
Subject: EPA comments on SPK 2014-01067, Telluride Medical Center, East Prospect Creek Basin
Date: Wednesday, March 25, 2015 4:21:51 PM
Attachments: [\[Untitled\].pdf](#)

Please find attached our comment letter.

Sarah Fowler

Biologist

Ecosystem Protection Program, EPA Region 8

303-312-6192



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
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Ref: EPR-EP

March 25, 2015

Sue Bachini Nall
Chief, Colorado West Regulatory Branch
400 Rood Avenue, Room 224
Grand Junction, CO 81501

RE: Public Notice SPK-2014-01067; Telluride Medical Center – Lot 1003R-1

Dear Ms. Nall:

The Environmental Protection Agency (EPA) has reviewed the referenced Public Notice requesting authorization for placing dredge and fill material in 0.447 acre of montane wetlands and a tributary of East Prospect Creek located in the Town of Mountain Village (TMV)) in conjunction with the construction of a 25,000 square-foot building to serve as a medical center for the Telluride Region, San Miguel County, Colorado. Our review included discussions with the TMV, your office, and our office of enforcement regarding the binding Consent Decree requirements. Our review included preapplication discussions with representatives of the TMV and Telluride Ski Company (Telski), your office, and our office of enforcement regarding the binding Consent Decree requirements.

We are concerned about the direct, secondary/indirect, and cumulative adverse impacts to wetlands that will result from this proposed project. Despite the enforcement action that led to the Consent Decree, and wetlands recovered through restoration and creation activities by the Telluride Ski Area, wetland losses in the Prospect Creek Basin continue to be a concern for the Agency.

The Consent Decree's Wetland Management Plan (Exhibit 5 to the Consent Decree) imposes increased scrutiny (beyond the Section 404(b)(1) Guidelines) on development of wetlands in the Prospect Creek Basin. The Management Plan is applicable to the activities of and binding upon Telluride Ski and Golf Company, The Telluride Company, Mountain Village, Inc. (dba Telluride Mountain Village, Inc.), and their business entities, affiliates, contractors, sub-contractors, employees, servants, and agents. Additionally, the Management Plan specifies that parties who purchase properties from Telski (and its successors, assigns, etc.) within the area that is subject to the Management Plan subsequent to entry of the Consent Decree by the court are obligated to comply with all applicable provisions of the Management Plan. Without more information regarding the title history of the property or the relationship of the TMV to the parties listed

above, it is unclear whether the property in this permit application is considered subject to the requirements of the Management Plan.

As you may be aware, paragraph 52.c of the Consent Decree in this matter provides that several provisions of the Consent Decree survive termination of the Consent Decree (paragraph 52.c, page 28). One of those provisions is paragraph 19 regarding the Management Plan developed by the United States and Defendants (Exhibit 5 to the Consent Decree). Paragraph 19 states, among other things, that the Management Plan “shall remain in effect until EPA authorizes its modification or termination,” (paragraph 19, page 7). EPA has not authorized modification or termination of the Management Plan. Paragraph 19 also specifies that “property subject to the Management Plan shall continue to be subject to the Management Plan whether transferred by the Defendants or not” and continue to be subject to the restrictions of the Management Plan (paragraph 19, pages 7-8).

One stated goal of the Management Plan is to avoid, minimize and mitigate impacts such that there is no further net loss of wetlands functions and values within the project area and, if possible, there are gains in these functions and values. Moreover, Section 5.1 of the Management Plan (Avoidance and Minimization) requires an analysis by Telski (prior to application for a Section 404 permit) of all practicable alternatives to any activities which may directly or indirectly have an impact upon wetland size or function. Telski is also required “to attempt to reconfigure, replat, and/or use adjacent open space to create buildable areas on existing lots without disturbing wetlands.” A list of all alternatives examined, and a discussion of the merits and limitations of each, are required to be kept by Telski and provided to the EPA and accompany all requests for authorization to undertake regulated activities in wetlands and other aquatic areas. Should the property be covered under the Management Plan, Telski and TMV may be required to provide information meeting these requirements.

In addition to our questions about the applicability of the Management Plan, the practicability analysis does not appear to meet the requirements of the Guidelines. For an alternative to be practicable under the Guidelines, it must be available and capable of being done, taking into consideration cost, existing technology, and logistics in light of the overall project purpose, in a manner that would not discharge into the waters of the U.S., or that would discharge into an alternative aquatic site with potentially less damaging consequences. Non-environmental costs (land acquisition, housing relocation, etc.) can be included in the practicability analysis but each alternative should be considered on its own for practicability to determine if the cost of the alternative is reasonable. The cost analysis under the Guidelines practicability analysis should not be based on a direct comparison between alternatives. The cost analysis is not an economic evaluation where it is determined that there is an arbitrary level of cost increase (10%, 20%, 30%) over the lowest cost alternative which is then inappropriately used to establish a cost threshold for determining practicable alternatives. Doing so would shift lots from upland development to wetland development lots simply because the remaining wetlands are not as expensive to purchase as upland areas. Under the Guidelines, the cost analysis determines if the cost of the alternative is within typical industry standards for constructing the alternative site.

We appreciate the alternatives analysis provided by the applicant identifying alternative sites

considered in the Telluride area and potential benefits and/or difficulties associated with the other sites. However, if it is determined that the applicant is subject to the binding restrictions of the Management Plan, then a more detailed analysis of all practicable alternatives is required as described above. Off-site alternatives evaluated may still be considered practicable under the Guidelines (40 CFR 230.10(a)) despite increased costs and future authorizations needed by other planning authorities (i.e., San Miguel County). In addition, a more detailed alternatives analysis may be required to be evaluated by Telski under the Consent Decree/Management Plan and provided for our review prior to the Section 404 permit application.

Accordingly, we believe the project as currently proposed is not in compliance with the Section 404(b)(1) Guidelines (part 230.10(a)) and may not comply with the binding requirements of the Consent Decree. We recommend the Corps withdraw the permit application or hold the permit in abeyance until less damaging practicable alternatives are fully evaluated for compliance under the Section 404(b)(1) Guidelines and until it is determined whether the Management Plan applies to this action; if it does apply, a complete alternatives analysis needs to be provided to EPA and the Corps.

If you have questions concerning these comments or recommendations, please contact Sarah Fowler of my staff at 303-312-6192 or Wendy Silver of the Legal Enforcement Program at 303-312-6637.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Hamilton", with a long horizontal flourish extending to the right.

Karen Hamilton, Chief
Aquatic Resource Protection and Accountability Unit
Ecosystem Protection Program

Cc: Jon Hranec, CDPHE

